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EXAMINER

GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

MAIL DATE	DELIVERY MODE
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12/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,294

Applicant(s)

LENHART, KLAUS

Examiner

Ernesto Garcia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007 and 10 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-18 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-12 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on September 18, 2007, September 10, 2007 and November 26, 2007 have been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election of Species

Claims 13 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 20, 2006.

Drawings

The drawings were received on December 10, 2007. These drawings are acceptable; however, the drawings contain a few discrepancies.

The drawings are objected to because some of the reference characters in Figure 3 contain brackets. Note that brackets cannot be associated with reference characters. See 37 CFR 1.84(p)(1). Further, since Figure 3 is a cross-section of Figure 2, reference characters "144" and "146" should not be in Figure 3 since these do not appear in Figure 1 or Figure 2. Figure 1 contains a minor discrepancy which makes the slot 43 appear as ending too short from the cylindrical shoulder 38. See the attachment of Figure 1 since the examiner identifies the vertical lines that need to be deleted from the slots 43.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "44" and "144" have both been used to designate the same slots in Figure 3.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "46" and "146" have both been used to designate the same notches in Figure 3.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "an interior portion that is threaded" recited in claim 16, line 9, and "a radially spreadable portion" recited in claim 16, line 10.

Claim Objections

Claims 8, 10, 11, and 15-18 are objected to because of the following informalities:

regarding claim 8, the first comma in line 9 should be deleted, "having" in line 10 should be deleted, and "an end" in line 11 should be --the end--;

regarding claim 10, the first comma in line 9 should be deleted, the second occurrence of "having" in line 9 should be deleted, "an end" in line 11 should be --the end--, and "pot, the" in line 20 should be --pot having a--;

regarding claim 11, the recitation "the base" in line 2 should be --a base--;

regarding claim 15, the first comma in line 9 should be deleted, the second occurrence of "having" in line 9 should be deleted, "and" in line 10 should be deleted, and "an end" in line 11 should be --the end--;

regarding claim 16, the first comma in line 9 should be deleted, the second comma should be replaced with --and--, the second occurrence of "having" in line 9 should be deleted, "and" in line 10 should be deleted, "an end" in line 11 should be --the end--, and "pot, the" in line 20 should be --pot having a--;

regarding claim 17, the first comma in line 9 should be deleted, "having" in line 10 should be deleted, "and" in line 10 should be deleted, and "an end" in line 11 should be -the end--; and,

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regarding claim 18, "an end" in line 11 should be --the end--. Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

Double Patenting

Applicant is advised that should claim 8 be found allowable, claim 17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

Claims 8-12 and 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 8, 10, and 15-17, the recitation "narrow limits" in claims 8, 10, and 15-17, line 13, makes unclear where the limits are taken from.

Regarding claims 15 and 16, the conditional limitation "or" in claim 15, line 20, and claim 16, line 22, makes unclear how one radially protruding fin is able to be guided in several axial slots. Note that the plural condition "more" only applies correctly.

Regarding claim 18, the recitation, "narrow limits" in line 13, makes unclear where the limits are taken from. Are the limits part of the distance or gap recited in line 12? If so, how does one determine more than one narrow limit from the distance or the gap. Further, the recitation "said axial movement" in line 14 lacks proper antecedent basis, and from what part is the axial movement from?

Claim Rejections - 35 USC § 102

Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Simond, 5,458,427.

Regarding claim 18, Simond discloses, in Figure 11, an adjustable-length pole comprising at least one outer tube **1**, an inner tube **2** structured, an adjusting screw **7**, a limit stop **A1** (see marked-up attachment) disposed at an end of the inner tube **2**, a limit stop (the C-clip) disposed at a free end of the adjusting screw **7**, and a spreading device **10,35**. The adjusting screw **7** is axially oriented within the outer tube **1** and supported in a rotationally fixed manner on the end of the inner tube **2**. The spreading device **10,35** comprises an interior portion **35** and a radially spreadable portion **10**. The interior

portion **35** is threaded. The radially spreadable portion **10** is not- threaded and separated from the limit stop **A1** disposed at the end of the inner tube **2** by a pre-established slight distance or gap **A2**. Note that the spreadable portion is able to move axially within narrow limits without rotation thereof in response to an axial force forcing the inner tube further into the outer tube and applying a radial force against an inner surface of the outer tube **1**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindemann et al., 6,027,087, in view of Seifert, DE-1,046,998.

Regarding claims 8 and 17, Lindemann et al. disclose, in Figure 1, an adjustable-length pole comprising at least one outer tube **11**, an inner tube **12** structured, an adjusting screw **32A**, a spreading element **32**, and an axially moveable interior element **31**. The inner tube **12** is dimensioned for insertion into the outer tube **11** in a telescoping fashion. The adjusting screw **32A** is axially oriented within the outer tube

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11 and supported in a rotationally fixed manner on the end of the inner tube **12**. A limit stop (the head of the screw) is disposed on the free end of the adjusting screw **32A**.

The spreading element **32** is radially spreadable and has a non-threaded bore **A1** (see marked-up attachment) and only a single inner cone **46**. The inner cone **46** opens towards the end of the inner tube **12**. The interior element **31** has an outer cone **34** structured, dimensioned, and disposed for cooperation with the inner cone **46**. The interior element **31** has an internal threaded bore **36** cooperating with the adjusting screw **32A**. The spreading element **32** and the interior element **31** cooperate and form a spreading device axially supported at the end of the inner tube **12**. However, Lindemann et al. fail to disclose an inner limit stop being disposed at the end of the inner tube **12**, and the spreading element **32** being disposed between the limit stop **14**, disposed at the end of the inner tube **12**, and the limit stop **25** disposed on the free end of the adjusting screw **32A**.

Seifert teaches, in Figure 2, a limit stop **18** disposed at the end of an inner tube **12** to prevent an axially moveable interior member **17** from coming out of the inner tube **12**. Therefore, as taught by Seifert, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a limit stop at the end of the inner tube of Lindemann et al. to prevent the interior member **31** from coming out of the inner tube. Given the modification, the spreading element **32** would have been disposed between the limit stop **18**, as added to Lindemann et al. at the end of the inner tube **12**, and the limit stop **A2** disposed on the free end of the adjusting screw **32A**.

Regarding claim 9, the pole is a ski or a walking stick.

Regarding claim 10, Lindemann et al. disclose, in Figure 1, an adjustable-length pole comprising at least one outer tube **11**, an inner tube **12** structured, an adjusting screw **32A**, a spreading element **32**, and an axially moveable interior element **31**. The inner tube **12** is dimensioned for insertion into the outer tube **11** in a telescoping fashion. The adjusting screw **32A** is axially oriented within the outer tube **11** and supported in a rotationally fixed manner on the end of the inner tube **12**. A limit stop (the head of the screw) is disposed on the free end of the adjusting screw **32A**. The spreading element **32** is radially spreadable and has a non-threaded bore **A1** (see marked-up attachment) and only a single inner cone **46**. The inner cone **46** opens towards the end of the inner tube **12**. The interior element **31** has an outer cone **34** structured, dimensioned, and disposed for cooperation with the inner cone **46**. The interior element **31** has an internal threaded bore **36** cooperating with the adjusting screw **32A**. The spreading element **32** and the interior element **31** cooperate and form a spreading device axially supported at the end of the inner tube **12**. The spreading element **32** is configured as a pot having a base **45A** penetrated by a free end area of the screw **32A**, facing away from the inner tube **12**.

However, Lindemann et al. fail to disclose an inner limit stop being disposed at the end of the inner tube **12**, and the spreading element **32** being disposed between the

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limit stop **14**, disposed at the end of the inner tube **12**, and the limit stop **25** disposed on the free end of the adjusting screw **32A**.

Seifert teaches, in Figure 2, a limit stop **18** disposed at the end of an inner tube **12** to prevent an axially moveable interior member **17** from coming out of the inner tube **12**. Therefore, as taught by Seifert, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a limit stop at the end of the inner tube of Lindemann et al. to prevent the interior member **31** from coming out of the inner tube. Given the modification, the spreading element **32** would have been disposed between the limit stop **18**, as added to Lindemann et al. at the end of the inner tube **12**, and the limit stop **A2** disposed on the free end of the adjusting screw **32A**.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lindemann et al., 6,027,087, in view of Seifert, DE-1,046,998, as applied to claim 8, and further in view of DSI, DE-8004343.

Regarding claim 12, Lindemann et al., as discussed, discloses, the limit stop (the head), being disposed on the free end of the adjusting screw **32A**, is a cap axially secured at the free end of the screw **32A**. However, the cap was not secured after the spreading element **32** has been set in place. Applicant should note that patentability of the product, not recited process steps, is to be determined irrespective of whether process steps are recited. Accordingly, how the cap was secured, e.g., by being placed

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after the spreading element has been set in place, is of little consequence when Lindemann et al. possesses such cap. Therefore, this limitation has been given limited patentable weight. See MPEP 2113. Further, it should be noted that DSI teaches this concept of securing a cap after the spreading element has been set in place to accommodate a spreading element that is not in two parts. Therefore, as taught by DSI, it would have been obvious to one of ordinary skill in the art at the time the invention was made to secure the cap after the spreading element has been set in place to accommodate a spreading element that is not in two halves.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindemann et al., 6,027,087, in view of Seifert, DE-1,046,998, and Kupski, 3,145,669.

Regarding claim 15, Lindemann et al. disclose, in Figure 1, an adjustable-length pole comprising at least one outer tube **11**, an inner tube **12** structured, an adjusting screw **32A**, a spreading element **32**, and an axially moveable interior element **31**. The inner tube **12** is dimensioned for insertion into the outer tube **11** in a telescoping fashion. The adjusting screw **32A** is axially oriented within the outer tube **11** and supported in a rotationally fixed manner on the end of the inner tube **12**. A limit stop (the head of the screw) is disposed on the free end of the adjusting screw **32A**. The spreading element **32** is radially spreadable and has a non-threaded bore **A1** (see marked-up attachment) and only a single inner cone **46**. The inner cone **46** opens

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towards the end of the inner tube **12**. The interior element **31** has an outer cone **34** structured, dimensioned, and disposed for cooperation with the inner cone **46**. The interior element **31** has an internal threaded bore **36** cooperating with the adjusting screw **32A**. The spreading element **32** and the interior element **31** cooperate and form a spreading device axially supported at the end of the inner tube **12**.

However, Lindemann et al. fail to disclose an inner limit stop being disposed at the end of the inner tube **12**, and the spreading element **32** being disposed between the limit stop **14**, disposed at the end of the inner tube **12**, and the limit stop **25** disposed on the free end of the adjusting screw **32A**. Further, Lindemann et al. fail to disclose the interior element **31** having one protruding fin guided in an axial slot of the spreading element **32**.

Seifert teaches, in Figure 2, a limit stop **18** disposed at the end of an inner tube **12** to prevent an axially moveable interior member **17** from coming out of the inner tube **12**. Therefore, as taught by Seifert, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a limit stop at the end of the inner tube of Lindemann et al. to prevent the interior member **31** from coming out of the inner tube. Given the modification, the spreading element **32** would have been disposed between the limit stop **18**, as added to Lindemann et al. at the end of the inner tube **12**, and the limit stop **A2** disposed on the free end of the adjusting screw **32A**.

Kupski teach, in Figure, 5, an interior element **17** having a protruding fin **33** guided in an axial slot **30** of a spreading element **16** to prevent the interior element from rotating relative to the spreading element. Therefore, as taught by Kupski, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a fin in the interior element of Lindemann et al. guided in the axial slot of the spreading element of Lindemann et al. to prevent the interior element from rotating relative to the spreading element.

Regarding claim 16, Lindemann et al. disclose, in Figure 1, an adjustable-length pole comprising at least one outer tube **11**, an inner tube **12** structured, an adjusting screw **32A**, a spreading element **32**, and an axially moveable interior element **31**. The inner tube **12** is dimensioned for insertion into the outer tube **11** in a telescoping fashion. The adjusting screw **32A** is axially oriented within the outer tube **11** and supported in a rotationally fixed manner on the end of the inner tube **12**. A limit stop (the head of the screw) is disposed on the free end of the adjusting screw **32A**. The spreading element **32** is radially spreadable and has a non-threaded bore **A1** (see marked-up attachment) and only a single inner cone **46**. The inner cone **46** opens towards the end of the inner tube **12**. The interior element **31** has an outer cone **34** structured, dimensioned, and disposed for cooperation with the inner cone **46**. The interior element **31** has an internal threaded bore **36** cooperating with the adjusting screw **32A**. The spreading element **32** and the interior element **31** cooperate and form a spreading device axially supported at the end of the inner tube **12**. The limit stop (the

head), disposed on the free end of the adjusting screw **32A**, is a cap axially secured at the free end of the screw **32A**.

However, Lindemann et al. fail to disclose an inner limit stop being disposed at the end of the inner tube **12**, and the spreading element **32** being disposed between the limit stop **14**, disposed at the end of the inner tube **12**, and the limit stop **25** disposed on the free end of the adjusting screw **32A**. Further, Lindemann et al. fail to disclose the interior element **31** having one protruding fin guided in an axial slot of the spreading element **32**.

Seifert teaches, in Figure 2, a limit stop **18** disposed at the end of an inner tube **12** to prevent an axially moveable interior member **17** from coming out of the inner tube **12**. Therefore, as taught by Seifert, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a limit stop at the end of the inner tube of Lindemann et al. to prevent the interior member **31** from coming out of the inner tube. Given the modification, the spreading element **32** would have been disposed between the limit stop **18**, as added to Lindemann et al. at the end of the inner tube **12**, and the limit stop **A2** disposed on the free end of the adjusting screw **32A**.

Kupski teach, in Figure, 5, an interior element **17** having a protruding fin **33** guided in an axial slot **30** of a spreading element **16** to prevent the interior element from rotating relative to the spreading element. Therefore, as taught by Kupski, it would have

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been obvious to one of ordinary skill in the art at the time the invention was made to provide a fin in the interior element of Lindemann et al. guided in the axial slot of the spreading element of Lindemann et al. to prevent the interior element from rotating relative to the spreading element.

Allowable Subject Matter

Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 11, the prior art of record does not disclose or suggest a adjustable-length pole comprising a spreading element comprising a cylindrical shoulder having a smaller exterior diameter than a base of the spreading element and facing an inner tube (lines 1-3) in combination with the spreading element having a non-threaded bore and only a single inner cone (claim 8, lines 9-10). The closest prior art, Lindemann et al. teach, a shoulder having a smaller exterior diameter than the base. However, the shoulder does not face the inner tube but rather the outer tube, or between the base and a top portion of the spreading element.

Response to Arguments

Applicant's arguments with respect to claims 8-10, 12, and 15-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

E.P.

Daniel P. Stodola

E.G.

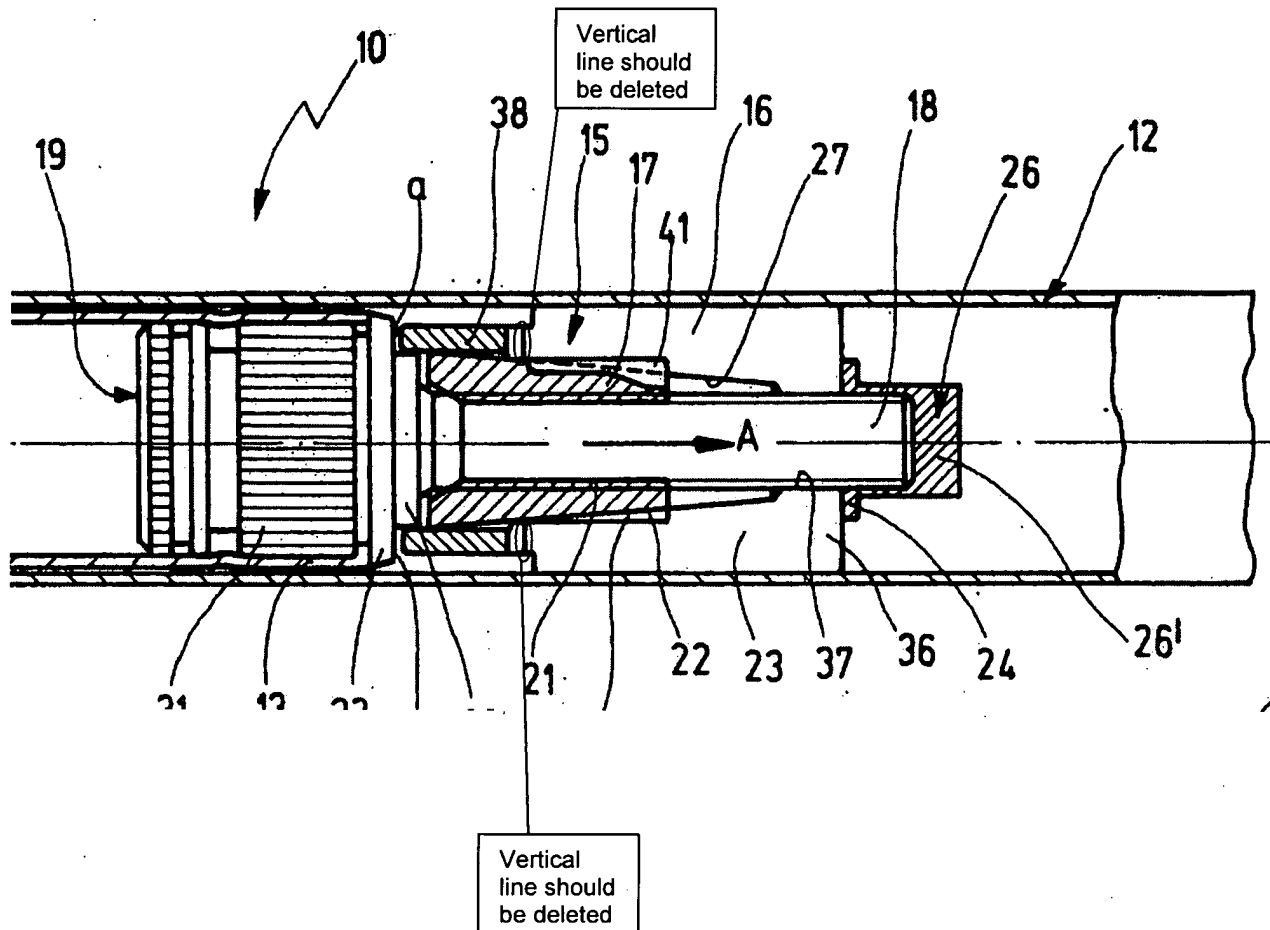
December 19, 2007

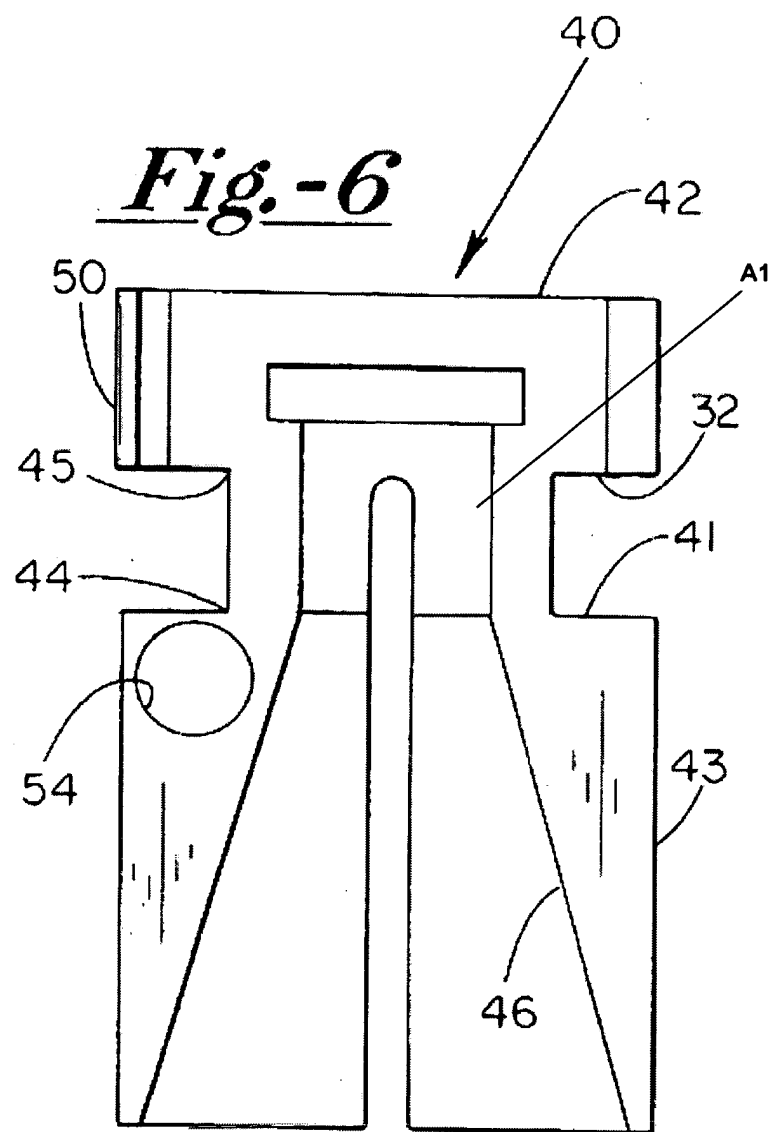
Attachment: one marked-up page of applicant's Figure 1
one marked-up page of Lindemann et al., 6,027,087
one marked-up page of Simond, 5,458,427

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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Figure 1 of Applicant's invention showing the drawing problem





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Simond, 5,458,427

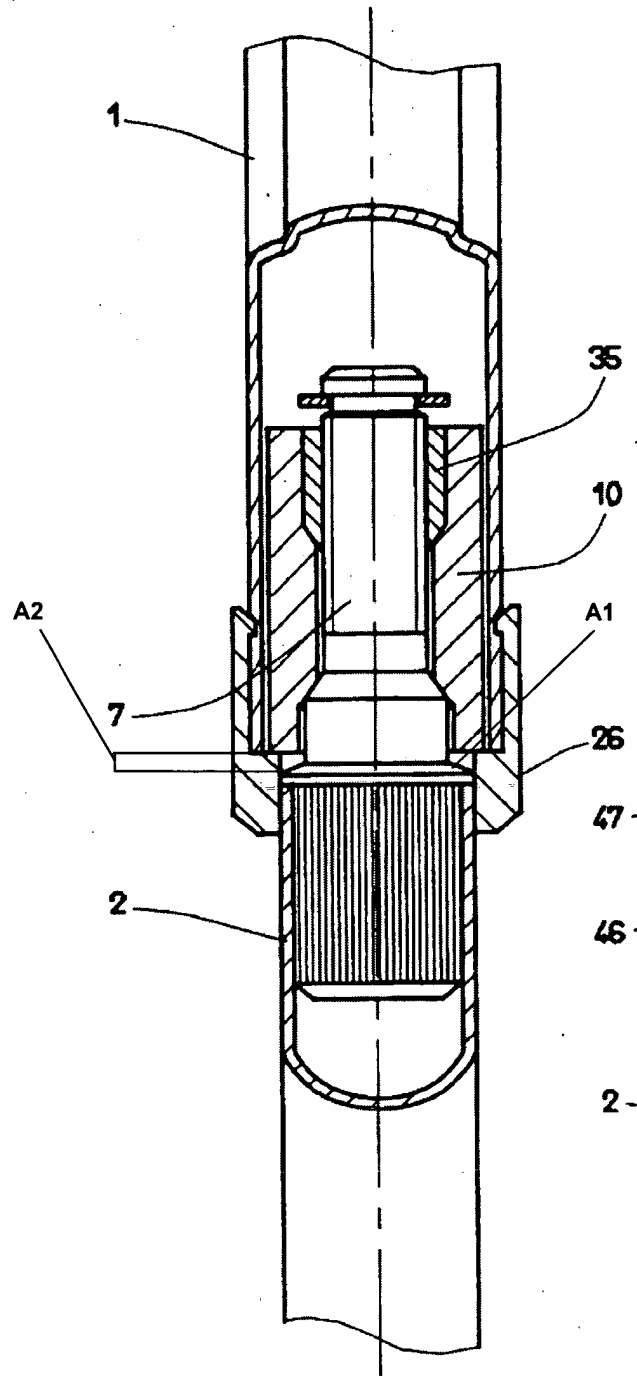


Fig. 11